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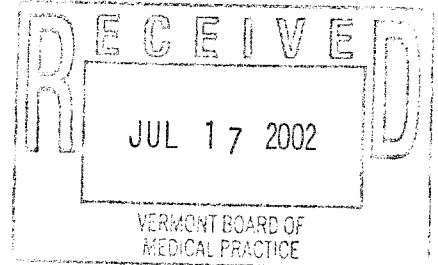
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July 16, 2002

Vermont Board of Medical Practice
Attention: Pamela Pembroke
109 State Street
Montpelier, VT 05609-1106



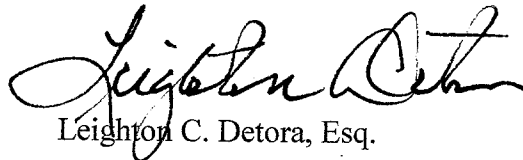
Re: Robert S. Baska, M.D.
MPS 38-0501
MPS 39-0501
MPS 60-0801

Dear Ms. Pembroke:

Enclosed please find **Respondent's Objections to the Hearing Committee Report**, for filing in the above-captioned matter. A copy has been forwarded this date to Attorney James Arisman.

Please be advised that we request oral argument. Kindly let us know when oral argument is scheduled.

Very truly yours,

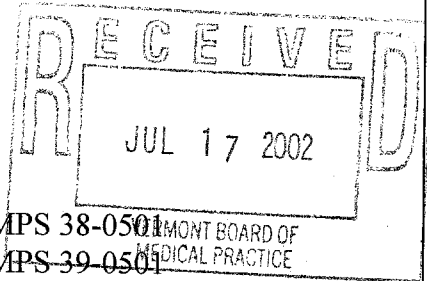


Leighton C. Detora, Esq.

LCD/lsw
Enclosure

cc: Robert S. Baska, M.D.
James S. Arisman, Esq.

STATE OF VERMONT
BOARD OF MEDICAL PRACTICE



In re: Robert S. Baska, M.D.

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Docket Nos. MPS 38-0501
MPS 39-0501
MPS 60-0801

**RESPONDENT'S OBJECTIONS TO
THE HEARING COMMITTEE REPORT**

COMES NOW the Respondent in the above-entitled action, by and through his attorney, Leighton C. Detora, Esq., of the Law Office of Valsangiacomo, Detora & McQuesten, P.C., and hereby objects to the Hearing Committee Report as follows:

1. COUNTS 1, 2, and 3 - Patient A

Conclusions of Law A, B, and C, address Counts 1, 2, and 3 of the Charges, (Pages 18 and 19 of the Committee Report), and are objected to for the following reasons:

A. While Paragraphs 14 through 17 of the Findings of Fact are generally accurate, they do not support the Conclusions of Law A, B, and C (Pages 18-19), for the following reasons:

1. In the presence of the symptoms described in these paragraphs, the pneumonia masked their cause and confounded not only Dr. Baska, but also Dr. Kiely, the Critical Care Team, and the pulmonary expert at Dartmouth-Hitchcock Medical Center, and was discovered only after a serendipitous finding during a CT scan of the chest (see Finding 17); and
2. The failure to treat the patient's post-surgical infection was based on the patient's very complex symptomatology and difficulty of diagnosis in the first instance (Findings 13, 14, 15, 16, and 17); and
3. While it is clear in retrospect what would have changed the course of events,

there is no articulation by the Committee as to what event during the course of Patient A's treatment triggered the obligation to perform a CT scan of the abdomen, the failure of which would have been a deviation, since a deviation from the standard of care is not shown simply because, in hindsight, some other course of action would have been better or more effective. Rooney v. Medical Center Hospital of Vermont, Inc., 162 Vt. 513, 522 (1994). The physician is not required to be infallible. Utzler v. Medical Center Hospital of Vermont, Inc., 149 Vt. 126, 127 (1987).

4. With respect to Conclusion of Law C regarding Count 3, while there is evidentiary support for the finding that the Respondent may have engaged in unprofessional conduct, it does not necessarily follow that it evidences unfitness to practice medicine.

B. Respondent objects to Finding 20 in that the uncontroverted evidence is that the sexual relationship began in 1997, as opposed to 1993 in the Committee Report, and continued on an intermittent basis into early 2001.

C. Respondent objects to the Finding in Paragraph 21 that: "Respondent's intimate and sexual relationship with Patient A compromised and affected his objectivity with regard to his care of her and exploited knowledge, trust, and emotions that resulted from his care of her.", as there is no evidentiary basis to support this Finding.

2. COUNT 7 - Patient D

A. Conclusion of Law G addresses Count 7 of the Charges (Page 19 of the Committee Report), and is objected to for the following reasons:

1. During surgery, the ureter was encased in scar tissue and it was felt by Dr. Baska that dissecting it free of adhesions would have presented a risk of injury to the ureter, and therefore it was not done, and amounted to an equally valid approach to the particular surgery; and
2. All of the experts who testified agreed that damage to the ureter during this surgery is a recognized risk of the procedure, and therefore does not amount to a deviation from a base standard of care.
3. The applicable standard of care for this surgical procedure does not require the use of stents. All experts who testified verified this. Dr. Neil Hyman, the senior colorectal surgeon at Fletcher Allen Health Care, a nationally respected surgeon whose position is such that he is one of the few who determine and test for the national standards of care in general and colorectal surgery, testified that in spite of the complications, the surgical care of Dr. Baska did fall into the realm of meeting these standards of acceptable and reasonable care. He found that while he might have done things slightly different in several of the cases, this did not mean that the care Dr. Baska provided was outside the acceptable standard. Dr. Labow, medical consultant to the president of Copley Hospital, has not recommended that stents be used during this procedure. Dr. Grabowski, a general surgeon, testified that the use of stents is not required as a measure of the standard of care. Dr. Betsy Perez, a urologist, testified that the standard of care applicable to this surgery does not require the use of stents.

Dr. Fred Rossman also testified that the standard of care at Copley Hospital does not now, and has never, required the use of stents in the particular surgery. Dr. Baska himself testified to that fact. Indeed, at the time of Patient D's surgery, there was no urologist on staff at Copley Hospital.

3. COUNT 8 - Patient E

A. Conclusion of Law H addresses Count 8 of the Charges (Committee Report Page 19). Its adoption is objected to for the following reasons:

1. The Amended Specification of Charges did not charge a deviation from the standard based on the patient's respiratory status; indeed, his respiratory status is never mentioned (see Amended Specification of Charges, Paragraphs 22 and 23, Pages 8-9); it became an issue only during the hearing; and
2. To the extent that respiratory status was an issue, the patient's primary care physician, Dr. Mark Lichtenstein, Board certified in family practice, approved the patient for surgery; as did Dr. Wu, a Board certified anesthesiologist, after his consideration of the patient's respiratory status (State's Exhibit 1-P, Page 12); and
3. With regard to the procedure itself, Dr. Baska had discussed the results of an ultrasound performed at Fletcher Allen Health Care with Dr. Jackson, Chief of Urology at Fletcher Allen, and was of the belief that the left side of the scrotum, the only side on which surgery was to be performed, contained a large hydrocoel; and

4. The left side of the scrotum, in fact, did not contain a large hydrocoel; rather, it contained a large amount of bowel, which was inconsistent with the ultrasound; and
5. It was reasonable for Dr. Baska to rely on the Fletcher Allen ultrasound in his discussion with Dr. Jackson because: "After the fact assessment of evidence does not support negligence if the initial assessment met the standards of reasonable medical care." Rooney v. Medical Center Hospital of Vermont, Inc., 162 Vt. 513, 522 (1994).

4. COUNT 10

A. Conclusion of Law J addresses Count 10 of the Charges (Page 20 of the Committee Report). Its adoption is objected to for the following reasons:

1. Counts 9, 10, and 11 rely on the same fact pattern; and
2. The Committee found in Conclusion of Law I that Dr. Baska's behavior in that regard did not evidence unfitness to practice medicine; and
3. The Committee found in Conclusion of Law K that Dr. Baska did not violate the Patient's Bill of Rights (18 V.S.A. § 1852), and therefore, Dr. Baska has been found to have treated Patient B with considerate and respectful care at all times and under all circumstances, with recognition of her personal dignity; and
4. Based on the findings of Counts 9 and 11, Count 10, which finds that Dr. Baska engaged in immoral, unprofessional and/or dishonorable conduct, is at odds with the findings in Counts 9 and 11, and should not be adopted.

5. COUNT 14

A. Conclusion of Law N addresses Count 14 of the Charges (Page 21 of the Committee Report). Its adoption is objected to for the following reasons:

1. Counts 12, 13, and 14 all rely on the same fact pattern; and
2. In Conclusion of Law L (Page 20), the Committee determined that Dr. Baska's behavior did not amount to conduct evidencing unfitness to practice medicine, under 26 V.S.A. § 1354(7); and
3. In Conclusion of Law M (Page 20), the Committee found that Dr. Baska's behavior did not constitute immoral, unprofessional and/or dishonorable conduct, under 26 V.S.A. § 1398; and
4. Therefore, Conclusion of Law N (Page 21), concluding that Dr. Baska failed to treat the patient in question with appropriate dignity is contradicted by Conclusions of Law L and M and should not be adopted.

6. COUNTS 15, 16, and 17

A. Conclusions of Law O, P, and Q, address Counts 15, 16, and 17 of the Charges (Page 21 of the Committee Report). All rely on the same incidents and fact patterns. Respondent objects to the adoption of Conclusion of Law O as follows:

1. Findings 56-59 do not amount to wrongdoing on the part of Dr. Baska in that the nurse had called a doctor other than Dr. Baska, the admitting and treating physician, to request an order for medication administration from another health care professional, an OB-GYN practitioner, who knew little or nothing about the patient's surgical condition (see Finding 59), which

presented a risk of harm to the patient. This is not conduct which evidences unfitness to practice medicine, indeed, just the opposite. It shows extreme concern for the patient.

2. That Mr. Juskiewicz interpreted the Respondent's behavior as a threat does not mean that the Respondent did threaten him, or did anything that exhibited any conduct evidencing unfitness to practice medicine.
3. The Committee's Conclusion of Law P (Page 21) that the actions of Dr. Baska did not violate the Patient's Bill of Rights means the Committee was satisfied that Dr. Baska treated the patient considerably and respectfully at all times, with recognition for personal dignity. This, then, is at odds with Conclusion of Law Q, where the Committee found that Dr. Baska's actions amounted to unprofessional or dishonorable conduct. Conclusion of Law Q, then, should be stricken and not adopted.

7. COUNTS 20 and 21

A. Conclusions of Law T and U address Counts 20 and 21 of the Charges (Page 22 of the Committee Report), and are objected to based on the following:

1. Each of the Conclusions of Law and Counts are based on the same fact pattern; and
2. The Committee has found in Conclusion of Law T that Dr. Baska was not guilty of unprofessional conduct evidencing unfitness to practice medicine under 26 V.S.A. § 1354(7); and
3. The factual Findings 70-74 (Pages 11-12) do not support a finding of

immoral or dishonorable conduct, as this was another episode of a nursing lapse in not calling the patient's admitting and treating surgeon; but rather, calling a family practitioner, a stranger to the patient, who knew nothing about the patient's surgical condition, which presented a risk to patient care.

4. The finding in Conclusion of Law T is contradictory to Conclusion of Law U, where the Committee determined that Dr. Baska had engaged in immoral, unprofessional and/or dishonorable conduct.
5. Conclusion of Law U, that Dr. Baska engaged in immoral, unprofessional and/or dishonorable conduct in this regard, is not supported by Findings 70-74; and further, is precluded by Conclusion of Law T, which finds that the Respondent committed no unprofessional conduct.

8. COUNTS 22 AND 23

A. Conclusions of Law V and W address Counts 22 and 23 of the Charges (Page 22 of the Committee Report). Respondent objects to the adoption of Conclusion of Law W (Count 23) as follows:

1. Counts 22 and 23 are based on the same fact patterns; and
2. The Committee has found that the fact pattern does not support a conclusion that the conduct described evidences unfitness to practice medicine under the statute 26 V.S.A. § 1354(7), in Conclusion of Law V, Count 22; and
3. The finding in Count 23 is without support in the Findings as no standard is articulated; and
4. Count 23 is pre-empted by Count 22.

9. COUNTS 24 and 26

A. Conclusions of Law X and Z address the issues raised in Counts 24 and 26 of the Charges (Page 22 of the Committee Report). Their adoption is objected to as follows:

1. Two patients should not be lumped together in one Count, as the cases are discreet; and
2. While a standard of care is articulated with regard to Patient C, Finding 106, no finding with regard to the standard of care with regard to Patient B is articulated in any of the Findings 85-97; and
3. Without an articulated standard for Patient B, there cannot be any discussion of the extent of deviation with regard to Patient C, either as to gross deviation or ordinary deviation.

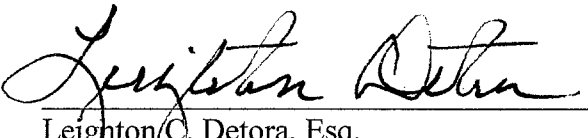
10. COUNT 27

A. Conclusion of Law AA addresses the issues raised in Count 27 of the Charges (Page 23 of the Committee Report). Its adoption is objected to as follows:

1. Two patients should not be lumped together in one Count, as the cases are discreet; and
2. While a standard of care is articulated with regard to Patient C, Finding 106, no finding with regard to the standard of care with regard to Patient B is articulated in any of the Findings 85-97; and
3. Without an articulated standard for Patient B, there cannot be any discussion of the extent of deviation with regard to Patient C, either as to gross deviation or ordinary deviation.

DATED at Barre, County of Washington and State of Vermont, this 15th day of July, 2002.

ROBERT S. BASKA, M.D.

BY: 
Leighton C. Detora, Esq.
Attorney for the Respondent